IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2818 to 2835 of 2000

FIRST APPEAL No.556 to 574 of 2001

with

FIRST APPEAL No 541 to 555 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SPL.LAQ OFFICER

Versus

BHANUPRASAD LALLUBHAI VYAS

Appearance:

MR UMESH TRIVEDI, AGP for Spl. Land Acquisition Officer & Collector, Godhra.

MS. SEJAL MANDAVIA for Executive Engineer, Narmada Division - 5.

MR. J.M. PATEL & MR. K.M. SHETH for respondents - claimants in all these matters.

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE J.R.VORA

Date of decision: 13/02/2001

ORAL JUDGEMENT (Per : MR.JUSTICE M.R.CALLA)

1. Admit. Issue Notice. Mr. J.M. Patel and Mr. K.M. Sheth have appeared on behalf of all respondents claimants, accept notice on their behalf in all these matters and waive the service. On the request of both the sides, the matters were taken up for final disposal today.

2. These 52 First Appeals in three groups i.e. First Appeals No. 2818/2000 to 2835/2000 (18 in number); First Appeals No. 556/2001 to 574/2001 (19 in number) and First Appeals No. 541/2001 to 555/2001 (15 in number) arise out of Land Acquisition Reference Cases No.688/90 to 705/90, 669/90 to 687/90 and 706/90 to 720/90 in Land Acquisition Cases No. 60/86, 58/86 and 59/86, respectively.

3. The lands of village Vitoj were sought to be acquired for Narmada main canal. For that purpose, the Notification u/s. 4 was issued on 2.6.1986/4.7.1986. The Notification u/s. 6 was issued on 7th of September, 1987. The Land Acquisition Officer passed the Award on 24.7.1989 in Land Acquisition Cases No. 60/86, 58/86 and 59/86. The Land Acquisition Officer awarded the compensation at the rate of Rs. 0.85ps per sq. meter. Aggrieved from the orders passed in three land acquisition cases as above, the claimants took the matter in Reference u/s. 18 of the Land Acquisition Act. The Reference Court i.e. 6th Jt. Civil Judge (SD), Godhra, had decided Reference Cases No. 688/90 to 705/90, Reference Case No. 696/90 being the main case, by his order dated 8th October, 1999, which is the subject matter of challenge in First Appeals No. 2818/2000 to 2835/2000 (18 cases). The Reference Court also decided Reference Cases No. 669/90 to 687/90, Reference Case No. 683/90 being the main case, by his order dated 8th October, 1999, which is the subject matter of challenge in First Appeal No. 556/2000 to 574/2000 (19 cases). Similarly, the Reference Court decided the Reference

Cases No. 706/90 to 720/90, Reference Case No. 720/90 being the main case, by his order dated 8th of October, 1999, which is the subject of challenge in First Appeals No. 541 of 2001 to 555 of 2001 (15 cases). All these three orders passed on 8th of October, 1999 are the subject matter of challenge before us in these 52 First Appeals in all. Whereas the points involved are common and the matters have been argued together, we propose to decide all these 52 First Appeals by this common judgment and order as under :

4. The Reference Court in each of these matters has determined the rate of compensation at Rs.10.00 in addition to the sum of Rs. 0.85ps granted by the Land Acquisition Officer, and thus the rate at which the compensation has been directed to be paid by the Reference Court in each of the matters is Rs.10.85ps. The Reference Court has based its order on the previous Award at Exh.25, in which the rate at which the compensation was to be paid for acquisition of lands of village Kadachala was the subject matter of challenge. As per Exh. 25 the Reference Court had granted the compensation at the rate of Rs.11.00 per sq. meter in all. There is no dispute between the parties that the village Kadachala is adjoining to village Vitoj, with which we are concerned in these Appeals. It is submitted that in the case of the lands of village Kadachala, the rate of compensation was reduced by the High Court from Rs. 11.00 per sq. meter to that of Rs.9.00 per sq. meter and the SLPs preferred against the decision of the High Court were rejected by the Supreme Court. Exh. 26 is the order as has been passed by the High Court and Exh. 27 is the writ issued by the Supreme Court regarding the rejection of the SLPs. Mr. Trivedi, learned AGP has argued that even on the basis of this award in which the rate of compensation as was finally decided is Rs.9.00 per sq. meter and therefore the compensation could not be paid to the claimants of the present cases even at the rate of Rs. 9.00 per sq. meter for the reasons that the date of issuance of notification u/s 4 in case of village Kadachala was 31st of January, 1988 whereas in the present case the date of issuance of notification u/s 4 was 2.6.1986. He therefore submits that on the accepted principles the reduction should have been made at the rate of 10% per year and on that basis the compensation should go down from Rs.9.00 to that of Rs. 7.70ps per sq. meter. Mr. Trivedi has invited our attention to the deposition made by Anilbhai Bhanuprasad Vyas at Exh.53 i.e the witness who was examined on behalf of the claimants in Land Acquisition Case No. 696/90. This witness has deposed

that the lands of their village i.e. village Vitoj and the lands of village Kadachala are similar and of equal productive value. As against it, Mr. J.M. Patel and Mr.K.M. Sheth have submitted that there is no dispute between the parties that the lands of village Vitoj are irrigated lands and there are 35 wells in this area whereas there was no evidence in the case of village Kadachala with regard to the existence of such wells and therefore keeping in view the consideration that the lands under acquisition in the present case i.e. lands of village Vitoj are having the facility of irrigation by 35 wells, the compensation was to be paid at a higher rate. It has been pointed out that the witness Anilbhai Bhanuprasad Vyas who has been examined at Exh. 53 and other witnesses have deposed the existence of 35 wells and their testimony on this aspect of the matter has remained intact despite cross-examination by the other side.

5. We, therefore, find that even if the argument on behalf of the appellant as raised by Mr. Trivedi to reduce the rate by 10% per year keeping in view the dates of issuance of notification u/s 4 i.e. 31.1.1988 in the case of previous award and 2.6.1986 in the present cases and thereby to reduce the rate from Rs.9.00 to that of Rs. 7.70 per sq.meter is accepted, the credit has to be given to the claimants for the existence of 35 wells on this land in comparison to the lands which were concerned in the previous award relating to village Kadachala and therefore even if the compensation is granted at the rate of Rs. 9.00 per sq. meter i.e. Rs.7.70 plus Rs. 1.30, in our opinion, it would be just and adequate. Further for the reasons aforesaid, the rate of compensation as has been determined by the Reference Court i.e. Rs. 10.85 per sq. meter is hereby reduced to that of Rs. 9.00 per sq. meter in all and the claimants in these 52 cases shall be entitled to compensation at the rate of Rs. 9.00 per sq. meter only instead of the rate as has been determined by the Reference Court. The order passed by the Reference Court shall stand modified accordingly so as to read Rs. 9.00 per sq. meter instead of Rs. 10.00 per sq. meter claimed in addition the rate of Rs.0.85 as was granted by the Land Acquisition Officer. To be precise, the claimants shall be entitled to compensation at the rate of Rs.9.00 per sq. meter only and the award is modified to that extent only. Rest of the reliefs as have been granted by the Reference Court remain intact. It goes without saying that if at all there is any land which is a new tenure land, the 5% deduction of government share shall be made in accordance with the provisions of Sec.11-A of Gujarat State

Amendment Act in the Land Acquisition Act (Gujarat Act 20 of 1965 dated 16.8.1965) and in case there is no new tenure land, there is no question of any deduction as such. The decree be drawn accordingly and the claimants may also be paid in the terms of this order read with other items as granted by the Reference Court.

6. All these 52 Appeals are hereby partly allowed with no order as to costs. It is expected that the appellant shall pay the due amount of compensation to the claimants in all these matters within a period of three months from the date the certified copy of this order is served upon them.

(M.R. Calla, J.) (J.R. Vora,J.)